ERIK AND TINA BARNES

NATIONAL WILDLIFE FEDERATION, ET AL.

IBLA 97-150, 97-151 Decided November 30, 1999

Appeals from a decision by the Arizona State Director, Bureau of Land Management, adopting the Wilderness Inholding Access Arrastra Mountain Wilderness Environmental Assessment. AZ-026-94-23.

Affirmed.

1. Rights-of-Way: Revised Statutes Sec. 2477

The existence of a right-of-way for a road across public lands under section 8 of the Act of July 26, 1866 (R.S. § 2477), repealed by section 706(a) of the Federal Land Policy and Management Act of 1976, depends on evidence showing historical use and dedication to a public purpose. Normally the existence of an R.S. § 2477 road is a question of state law for adjudication by state courts.

2. Administrative Procedure: Administrative Review--Federal Land Policy and Management Act of 1976: Land-Use Planning--Federal Land Policy and Management Act of 1976: Wilderness

The Secretary is required to provide such access to non-Federally owned land surrounded by public lands which have been designated as wilderness lands as is adequate to secure to the owner of the inholding the reasonable use and enjoyment thereof, in conformance with reasonable rules and regulations applicable to access across public lands.

3. Wilderness Act

The Wilderness Act, 16 U.S.C. §§ 1133(c) and 1134(a) (1994), preserves existing access rights of private inholders. If a landowner has no prior existing right to access, he must be given the

option of adequate access or of a land exchange. In this latter situation, where an inholder is offered an exchange, the statutory requirements are met, and he then has no right of access.

4. Wilderness Act

A BLM decision to allow maintenance of a segment of an access route to a private inholding within a recently designated wilderness area to facilitate limited and reasonable vehicle access consistent with the prewilderness grazing use is not contrary to the Wilderness Act, 16 U.S.C. § 1133(d)(4)(2) (1994), and will be upheld on appeal absent a showing of compelling reasons for modification or reversal.

5. Environmental Quality: Environmental Statements--National Environmental Policy Act of 1969: Environmental Statements

Compliance with the National Environmental Policy Act of 1969 requires BLM to take a hard look at the issues, identify relevant areas of environmental concern, identify alternatives, and, where no EIS is prepared, make a convincing case that the potential environmental impacts are insignificant.

APPEARANCES: Thomas D. Kelly, Esq., Prescott, Arizona, for Erik and Tina Barnes; Richard R. Greenfield, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Phoenix, Arizona, for the Bureau of Land Management; Thomas D. Lustig, Esq., James J. Tutchton, Esq., for the National Wildlife Federation.

OPINION BY ADMINISTRATIVE JUDGE TERRY

These are consolidated appeals from the November 13, 1996, Wilderness Inholding Access Arrastra Mountain Wilderness Environmental Assessment (WIAEA) and Finding of No Significant Impact/Decision Record (FONSI/DR) AZ-026-94-23 issued by the Arizona State Director (SD), Bureau of Land Management (BLM).

The first appeal (IBLA 97-150) was filed by Erik and Tina Barnes (Barnes or appellants), who are the operators of the Santa Maria Ranch, located outside the Arrastra Mountain Wilderness, and the owners of a 40-acre parcel within the wilderness area. BLM issued this decision in response to a request by the Barnes to utilize motorized vehicles to reach their private property inholding within the designated wilderness area.

On November 28, 1990, the Arizona Desert Wilderness Act of 1990 (Pub. L. No. 101-628) was enacted. This Act designated certain public lands in Arizona as wilderness, including lands historically used for grazing under BLM authorization. Livestock grazing, where authorized prior to passage of the law, is permitted to continue within the wilderness. On July 17, 1996, BLM adopted a Range Improvement Maintenance Plan (RIM plan) which was appealed by the National Wildlife Federation (NWF) and the Barnes. Those appeals were docketed as IBLA 96-526 and 96-536. They were consolidated and adjudicated in a separate Board decision.

Among the BLM administered grazing allotments in the Arrastra Mountain Wilderness is the Santa Maria Ranch allotment No. 5046. It comprises 27,574 acres of which 17,280 are within the wilderness area. The Barnes, d.b.a. the Santa Maria Ranch, are permittees of this grazing allotment. In 1990, the Barnes bought the Santa Maria Ranch and the 40-acre inholding parcel. The inholding parcel is located in the SE¼SW¼ of sec. 14, T. 12 N., R. 10 W., in a portion of the Santa Maria Ranch allotment within the Arrastra Mountain Wilderness.

Access to the inholding parcel is by a partially overgrown and eroded jeep trail which crosses 2.4 miles of the wilderness between the wilderness border and the private property. This trail was closed to motorized traffic at the time of designation of the wilderness. The WIAEA states that the jeep trail access was built by the Santa Maria Ranch more than 50 years ago across state land to access the private land, private water rights, Tina High Spring and the Upper and Lower Red Tank livestock watering facilities. BLM acquired these lands and associated access routes from the state by means of two land exchanges in the 1980's. At one time, about 1940, a road was bulldozed to the bottom of Peoples Canyon to haul in supplies necessary to maintain the water pump and pipeline. The road was not maintained and was impassible to the rim of Peoples Canyon and the boundary of the private land before 1980. (WIAEA at 10-11.)

Public lands in the eastern part of the Arrastra Mountain Wilderness are managed under the Lower Gila North Management Framework Plan (March 1983), which recommended that the Peoples Canyon Wilderness Study Area be designated as a wilderness. It also recommended that the 40-acre private parcel, later acquired by the Barnes, be acquired through purchase or land exchange. (WIAEA at 1.) The BLM explored various options with the Barnes but made no formal land exchange, sale or lease offers until May 1995. At that time, BLM offered to acquire the Barnes' 40 acre parcel for an "exchange value of approximately $200,000." The Barnes rejected BLM's offer. See NWF Petition for Stay Pending Appeal, Exs. D and E; WIAEA at 4.

The access specifications of BLM's chosen Alternative are narrated beginning at page 4 of the WIAEA. In summary, bulldozer, truck and/or backhoe access is allowed to "complete initial repairs" to about 1,000 feet of the 2.4 mile route, as staked by BLM. (WIAEA at 4, 7.) The remainder of the route would not be maintained or bladed. Pickup truck, all terrain vehicle and trailer access is permitted for "initial pump and pipeline

installation" and maintenance on the Barnes' parcel. The WIAEA emphasizes that only such traffic by motorized vehicles is permitted as is necessary to active grazing operations, estimated at 120 days annually, and preparatory activities on this portion of the allotment. Further, bulldozer or backhoe access would be authorized in writing on a case-by-case basis "for repair of damage to the access route and for reestablishing authorized access," and only if route damage is so extensive as to preclude repair with hand tools. The anticipated frequency of need for such access is "on the average of once every three to 5 years." (WIAEA at 6, 7.) The WIAEA lists a number of mitigation actions/stipulations which include the prohibition of mechanized access from April 1 through July 31 "if the peregrine falcon aerie is in use." (WIAEA at 8.)

The stipulation concerning the peregrine falcon follows from an April 26, 1996, U.S. Fish and Wildlife Service (FWS), opinion which addressed reasonable mechanized or vehicular access by the Barnes to their inholding. In its opinion, FWS concurred with BLM's assessment that regulation of access to the inholding, i.e., permission for limited motorized traffic, is not likely to adversely affect the Gila topminnow and desert pupfish, and that BLM's action "is not likely to jeopardize the continued existence of the American peregrine falcon." (FWS Op. at 1, 2.) The FWS opinion further states:

> An active peregrine falcon eyrie was discovered in Peoples Canyon in the spring of 1994. Arizona Game and Fish Department biologists observed a pair of breeding peregrine falcons on May 18, 1994. The presence of two nestlings of approximately two weeks of age was confirmed on June 15, 1994 (Ward and Siemens (1995)). It is not known if the nestlings fledged. The eyrie is located in a pothole within 50 feet of the top of a 300 foot cliff face overlooking South Peoples Spring. The nest site is approximately 300 feet vertically above the spring. Use of the site in 1995 was not confirmed. The eyrie is located on the privately owned 40-acre inholding which is within the action area.

Id. at 6.

While FWS determined that use of the access road would not adversely affect the peregrine falcon, it did conclude that "use of a pump at South Peoples Spring, and any other disturbing activities the landowners may conduct on the inholding due to availability of vehicular access, may adversely affect the peregrine falcon." (FWS Op. at 9.) For this reason, FWS prescribed a number of mitigating measures BLM was to implement "to minimize incidental take that might otherwise result from the proposed action." Among these was an instruction to the landowners to conduct no disturbing activities on the inholding between March 1 and July 31, when the peregrine eyrie is active, unless inspection by biologists show that the eyrie is not in use. Among "disturbing activities" FWS listed were bulldozing, backhoeing, chainsawing, blasting, or the running of a gasoline pump at South Peoples spring. (FWS Op. at 10, 11.)

The Barnes assert that they have a vested right of access under section 8 of the Act of July 26, 1866 (R.S. § 2477), 43 U.S.C. § 932 (1970), repealed by section 706(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2793, and contend that any restriction thereof is unlawful. (Statement of Reasons (SOR) at 2.) 1/

BLM asserts that the Barnes have provided no evidence of the existence of an R.S. § 2477 right-of-way, that under Arizona law, such a right-of-way would have had to meet certain notification and dedication requirements, and that no such requirements were met. BLM notes in addition that the Barnes' claim to an R.S. § 2477 right-of-way must fail because the lands burdened by the access road were owned by the State of Arizona prior to the repeal of R.S. § 2477 by FLPMA, on Oct. 21, 1976, and that for this reason, the lands could not have been subject to an R.S. § 2477 claim. (Answer at 19-20.)

[1] R.S. § 2477 provided that: "The right of way for construction of highways over public lands, not reserved for public uses, is hereby granted." 43 U.S.C. § 932 (1970). Under R.S. § 2477, either action by a public authority or continued use of a road by the public over a period of time may have resulted in the dedication of a road as a public highway by operation of law. See Ball v. Stephens, 158 P.2d 207, 209 (Cal. Dist. Ct. App. 1945). The grant arises when a public highway over unreserved public

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1/ In their SOR, filed in IBLA 97-150 (appeal of BLM's WIAEA), the Barnes "incorporate" their pleadings filed in IBLA 96-536 (appeal of Arrastra Mountain Wilderness RIM plan (AZ-026-92-011)). In the present appeal, they assert (which they did not in IBLA 96-536) that they own "vested water sources" described as Upper Red Tank, Lower Red Tank, Tina's High Spring, McGrew Spring, Sycamore Springs, Jasper Tank, Sam Spring, and Peoples Canyon Spring. The Barnes contend that the RIM plan arbitrarily abridges their access to these water sources.

BLM explains that as to Jasper Tank and Sam Spring certificated water rights, Nos. 3985 and 3977, are held by BLM. According to the records of the Arizona Department of Water Resources (ADWR), the Barnes have permits for certificates of water rights issued by the ADWR for McGrew Spring (No. 33-90231) and Sycamore Spring (No. 33-90229). The Upper and Lower Red Tank water developments, BLM asserts, are not water rights but are "use points" for South Peoples Spring. As to Tina's High Spring, the Barnes have a claim of water right only (No. 36-67287). BLM points out that these "water rights" are limited to stockwatering purposes only, and not for domestic and agricultural purposes. (Answer at 21; Exs. E and O to Answer.)

As noted earlier, the Barnes' challenges to the RIM plan are adjudicated in a separately docketed appeal consolidating NWF's and the Barnes' appeals of that plan. Water rights are not at issue here. The issue before us concerns the validity of BLM's regulation of the Barnes' access to their 40-acre inholding.

lands is established pursuant to the laws of the jurisdiction where the land is located. Wilkenson v. Department of the Interior, 634 F. Supp. 1265, 1272 (D. Colo. 1986). The question of whether a road is a public highway is a matter of state law. Sierra Club, 104 IBLA 17, 18 (1988), and cases there cited.

The Barnes claim "construct[ive] and historical use" (SOR at 2) of the access route at issue. However, they provide no evidence to support their claim or to controvert the lack of constructive and historical use stated in the WIAEA. Since the critical date for determination of whether or not the road is a public highway is October 21, 1976, the date of passage of FLPMA, the assertion of constructive and historical use would have to be supported by evidence predating October 21, 1976. The record in this case does not support the allegation that the route in question is an R.S. § 2477 highway, either by use or dedication. See Nick Dire, 55 IBLA 151, 154-55 (1981).

Next, the Barnes challenge five specific conditions of access stated in the SD's November 13, 1996, FONSI/DR and WIAEA as inconsistent, unreasonable and vague. The first condition states:

> Bulldozer, truck and/or backhoe access to the 40-acre parcel to complete initial repairs to BLM-staked segments of the access route. Only minimal repairs (those needed to ensure safe passage of four-wheel-drive pickup trucks and other motor vehicles) would be permitted, making the access route suitable for occasional vehicle travel. The entire route would not be maintained or bladed.

(FONSI/DR at 1.)

The Barnes assert that safe passage is difficult to assure if the entire route cannot be maintained or bladed. The Barnes suggest that initial repairs should be inclusive enough to preclude the necessity of future repairs.

The next condition to which the Barnes object states:

> Vehicle access by four-wheel drive pickup truck or all-terrain vehicle to ferry supplies, fuel and pump/pipe repair materials to the private land for ranch operations. This mechanized use is contingent to access required for active grazing operations or preparatory activities needed prior to cattle grazing this part of the allotment. Mechanized vehicles could be used when no practical or reasonable alternatives exist, such as when carrying heavy and unwieldy materials, like fuel, pipe or a pump, or for pump operations. A trailer may be towed to carry gear or materials. Routine monitoring of the

> property and the water pipeline during inactive grazing periods would not require mechanized access unless pipeline or other repairs are undertaken.

(FONSI/DR at 1 (emphasis added).)

The Barnes object to the underscored portion of this condition stating that it is inconsistent with a mitigation measure providing for the scheduling of motorized and mechanized activities concurrently, whenever possible, to minimize the number of trips, affected days and duration of activities. (FONSI/DR at 3.) The Barnes assert that "segregation of purpose and limitation of consolidated purposes is arbitrary and capricious and not supported by a rational basis." (SOR at 5.)

The next condition states that "[b]ulldozer or backhoe access would be authorized in writing on a case-by-case basis by the authorized officer for the repair of severe weather damage to the access route and for re-establishing authorized access. The route damage would have to be beyond the capability to hand repair." (FONSI/DR at 1.) The Barnes assert that this provision arbitrarily segregates the use of bulldozers from the use of other authorized motorized vehicles.

The Barnes object to a mitigation measure which provides:

> Mechanized access by heavy equipment (bulldozers, backhoes, etc.), construction, blasting, or mechanized access related to running the gasoline pump on the private inholding will not be authorized for the period from April 1, through July 31, if the peregrine falcon aerie is in use. If a current on-site inspection shows that the eyrie is not being used or that other nests are not in the project area, all authorized motorized or mechanized access to the private inholding can occur.

(FONSI/DR at 4.)

The Barnes assert that the provision is silent as to who will be monitoring the peregrine falcon and how often such monitoring will occur. They insist that monitoring must be performed by authorized persons. The Barnes also dispute that a peregrine falcon eyrie exists at all. (SOR at 5-6.)

Next, the Barnes object to a mitigation measure which states:

> The permittee will attempt to confine motorized and mechanized vehicle and equipment use to off-peak times during the cool weather use season October 1 through May 1, with Tuesday, Wednesday and Thursday being the preferred periods

> of use, followed by Monday and Friday. Weekend, holiday and general firearms deer and javelina seasons should also be avoided when feasible.

(FONSI/DR at 4.)

The Barnes assert that there is no evidence to show that motorized activity would disrupt hunting, and that to restrict access to specific weekdays is arbitrary and capricious.

Finally, the Barnes object to an emergency measure which provides that they must notify the Area Manager "if possible," prior to entering the wilderness with motorized vehicles when responding to an emergency. (WIAEA at 7.) The measure also provides that the Area Manager may be contacted within 48 hours if prior notification is not possible. Id. The Barnes assert that this proviso conflicts with their "right of unfettered access for private purposes as granted in the Decision Record." (SOR at 8.)

BLM responds that under governing authorities BLM is well within its authority in the restrictions it placed on the Barnes' access. BLM observes that neither the Barnes nor their predecessors were concerned with maintenance prior to the wilderness designation. Moreover, stockwatering, grazing, and recreation do not require complete maintenance of the entire route. BLM notes further that appellants never requested bulldozer and backhoe access to their private land. Such equipment would be necessary only for route maintenance and is permitted by the BLM action for that purpose. BLM notes that limitations on mechanized use follow from the Barnes' own suggestions in earlier communications, and that the access conditions are not absolute but are intended to achieve what is reasonably possible. (Response at 25-30, 31-36.)

With respect to the peregrine falcon, BLM explains that the nest location was made based on information provided to the Arizona Game and Fish Department and that that agency confirmed the existence of the eyrie through several visits by members of its staff.

[2] The governing authority is the Wilderness Act, 16 U.S.C. § 1134(a) (1994), which provides in pertinent part:

> In any case where State-owned or privately owned land is completely surrounded by * * * lands designated by this chapter as wilderness, such State or private owner shall be given such rights as may be necessary to assure adequate access to such * * * private owner and their successors in interest, or the * * * privately owned land shall be exchanged for federally owned land in the same State of approximately equal value * * *.

The regulation at 43 C.F.R. § 8560.4-3(a) effectively restates this statutory provision. 43 C.F.R. § 8560.4-3(c) provides in addition:

> Access by routes or modes of travel not available to the general public may, when fully justified, be permitted by written authorization of the authorized officer. The authorization shall prescribe routes or modes of travel which will result in impacts of least duration and degree on wilderness characteristics, and, at the same time, serve the reasonable purposes for which the lands are held or used.

In short, the owner of inholdings of private land surrounded by Federal lands is entitled to such access as is adequate to secure the reasonable use and enjoyment thereof, but such owner may also be required to comply with rules and regulations applicable to access across public lands. Francis M. Plass, 145 IBLA 105, 108 (1998). In Mathilda B. Williams, 124 IBLA 7, 12-13 (1992), we observed:

> When Congress incorporated language in the California Wilderness Act of 1984 and the Wilderness Act which guaranteed the right of reasonable access to owners of private inholdings, it did not mandate that the access was to be unrestricted. BLM is required to "prescribe routes and modes of travel which will result in impacts of least duration and degree on wilderness characteristics and, at the same time, serve the reasonable purposes for which the lands are held or used." 43 CFR 8560.4-3(c). In addition, BLM has stated its policy that: "Reasonable use and enjoyment need not necessarily require the highest degree of access, but rather, could be some lesser degree of reasonable access" (IM No. 85-579 at 1). Applying these standards, BLM deems access which is reasonably restricted to meet the requirements of 43 CFR 8560.4-3(c) to be "adequate access" under the Wilderness Act (16 U.S.C. § 1134(a) (1988)). See Wilderness Management Policy, dated September 24, 1981, at 12. If BLM grants reasonable access to private inholdings, it is entitled to limit that access to preserve the wilderness character of the land, pursuant to section 4(b) of the Wilderness Act, as amended, 16 U.S.C. § 1133(b) (1988).
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> In addition, section 1323(b) of [the Alaska National Interest Lands Conservation Act], 16 U.S.C. § 3210 (1988), which also governs access to private inholdings, provides that such access is to be "subject to such terms and conditions as the Secretary * * * may prescribe." 16 U.S.C. § 3210(b) (1988). The owner of the surrounded private land must "comply with rules and regulations applicable to access across public lands." id.

(Footnote omitted.)

We have reviewed the Barnes' objections in light of the WIAEA and conclude that while BLM has developed a detailed set of instructions for the Barnes to observe, none of the strictures placed on access could be considered as arbitrary, capricious, or unreasonably onerous. Thus, BLM's limitation of bulldozer and backhoe access to those segments of the route which could not be traversed without repair work by such machines is appropriate. The WIAEA specifically describes these road segments as two wash crossings and two steeply eroded slopes where about 500 feet of distance would undergo repair. Another approximately 500 feet of road repair would be required on the "highly eroded downslope portions traversing public lands in the upper east confines of Peoples Canyon." (WIAEA at 4, 6.) The Barnes demonstrate no need of bulldozer/backhoe use beyond that envisioned as necessary by BLM.

The Barnes' allegation that BLM's action arbitrarily segregates and limits access trips by purpose is not a reasonable interpretation of the access prescriptions. In the first instance, access for bulldozer and backhoe is permitted for the purpose of repairs, to make the access passable for reaching the inholding. Secondly, access to the inholding is allowed by pickup and all terrain vehicle to ferry supplies, to do initial pump/pipe maintenance, and for recreation. The emergency notification provision and mitigation provisions recommending the concurrent scheduling of trips are not inconsistent with these access provisions. Moreover, in view of the fact that there is no need of bulldozers and backhoes on the inholding itself, BLM's restriction of these machines to carry out the initial task of making the access route passable, and to reopen it should severe weather require additional work, is reasonable.

The existence of the peregrine falcon eyrie is established by the record. The participants in BLM's WIAEA include wildlife and endangered species specialists whose expertise, in cooperation with the FWS, is utilized with respect to the falcon. The FWS biological opinion instructs BLM to monitor the eyrie to determine the level of incidental take that results from actions on private land and instructs the landowner to structure his activities so as to avoid adverse effects to the peregrine falcon. BLM's responsibilities in this area are concisely listed at pages 10-12 of the FWS biological opinion.

Finally, BLM's direction that the Barnes attempt to confine motorized/mechanized activity from fall through spring preferably to Tuesday, Wednesday, and Thursday, followed by Monday and Friday, apparently originated with the Barnes themselves. In a September 7, 1994, letter to the Area Manager providing comments to the WIAEA, the Barnes stated:

> The fact that visitor use is light (fewer than 10 people a week) and that most use occurs during the cool weather months suggests that the impacts of vehicle use on primitive recreation could be mitigated if limited to off-peak times. Most visitors probably come during the weekend or for some part of the weekend. If trips to the inholding occurred during the

> middle of the week (Tuesday, Wednesday and Thursday) most visitors would never see or hear a vehicle. Further, if major road or water repair trips were restricted to summer months, again, most visitors would never see or hear a vehicle. By this the owners do not mean to suggest that they would agree to any such mitigation, only that such mitigation might be possible if reasonably tailored to the owners' needs and not so restrictive as to preclude the intended uses of the land.

(WIAEA at 69.)

To the extent not discussed in this opinion concerning IBLA 97-150, the Barnes' other arguments have been considered and rejected.

The second appeal (IBLA 97-151), was filed by the NWF, The Wilderness Society, Yuma Audubon Society, and Sierra Club Palo Verde Group (NWF). They contend that the Barnes are not entitled to access at all because they have refused a fair and adequate offer of exchange. NWF cites section 5(a) of the Wilderness Act (16 U.S.C. § 1134(a) (1994)), which provides for either the assurance of "adequate access" to privately owned land completely surrounded by a wilderness area or for the exchange of the privately owned land for Federally owned land of approximately equal value. NWF contends that where BLM has either offered access or an exchange, it has discharged its legal obligations under section 5(a). In this case, NWF argues, BLM has discharged its obligation by its May 8, 1995, offer of $200,000 as an "exchange value" for the Barnes' inholding. (SOR at 27-30.)

BLM contends that no Federal lands for exchange were ever identified. Rather, BLM's May 8, 1995, letter proffered an exchange value of $200,000. Moreover, BLM argues, The Wilderness Act, 16 U.S.C. § 1133(c) (1994), preserves "all existing private rights of access." (BLM response at 30-36.)

[3] As BLM observes, the Wilderness Act preserves existing access rights of private inholders. 16 U.S.C. § 1133(c) (1994). Under section 1134(a), if a landowner has no prior existing right to access, he must be given the option of adequate access or of a land exchange. In this latter situation, where an inholder is offered an exchange, the statutory requirements are met, and he then has no right of access. See 4A Op.O.L.C. 30 (1980) (Counsel-Inf. Op.).

NWF's interpretation of the statutory provisions is not tenable. In this case, there are no facts indicating that the Barnes are not holders of access rights predating the wilderness designation. Those access rights are preserved, as above noted, by § 1133(c). Even if the Barnes had no prior existing access rights, the record does not support NWF's argument that an exchange was proffered and rejected. BLM's May 8, 1995, letter used the term "exchange value." It can reasonably be interpreted as the offer of an amount certain as a basis upon which an exchange might go forward. No "offer" of an exchange was made. Nor would the inholder, as NWF

suggests, have been deprived of statutorily provided options merely by having been the recipient of an offer. Accordingly, we find without merit NWF's argument that the Barnes have no right of access.

NWF also contends that BLM's WIAEA would violate the mandate to preserve the wilderness character and run afoul of the prohibition of roads in wilderness areas. (SOR at 25-27.)

BLM responds that repair work on approximately 1,000 feet of the 2.4-mile access is not construction or reconstruction but maintenance. BLM notes that the repaired portion of the access route would increase in stability because construction techniques would include water bars, compaction, and drains which would decrease erosion. (Answer at 12.)

[4] Section 101(f) of the Arizona Desert Wilderness Act of 1990 (Act), 104 Stat. 4469, provides that the grazing of livestock, where established prior to the Act, "shall be administered in accordance with section 4(d)(4) of the Wilderness Act and the guidelines set forth in Appendix A of the Report of the Committee on Interior and Insular Affairs to accompany H.R. 2570 of the One Hundred First Congress (H. Rept. 101-405)." Section 101(f) directs the Secretary to review BLM "policies, practices and regulations" regarding grazing in wilderness areas in Arizona to insure that they fully conform to congressional intent as expressed in the Act.

Section 4(d)(4) of the Wilderness Act, 16 U.S.C. § 1133(d)(4)(2) (1994), referred to in the Arizona Act, provides that "the grazing of livestock, where established prior to September 3, 1964, shall be permitted to continue subject to such reasonable regulations as are deemed necessary" by an agency administering an area designated as wilderness.

The applicable regulations provide at 43 C.F.R. § 8560.4-1(a) that the grazing of livestock, where established before wilderness designation "shall be permitted to continue under the regulations on the grazing of livestock on public lands in part 4100 of this chapter and in accordance with any special provisions covering grazing in wilderness areas that the Director may prescribe." Under 43 C.F.R. § 8560.4-1(b), "Grazing activities may include the construction, use and maintenance of livestock management improvements and facilities associated with grazing" in compliance with wilderness area management plans.

The Congressional Grazing Guidelines (Excerpt from House Report 96-1126) states at Point 2, that "[t]he maintenance of supporting facilities, existing in an area prior to its classification as wilderness, including fences, line cabins, water wells and lines, stock tanks, etc. is permissible in wilderness," and such maintenance may "be accomplished through the occasional use of motorized equipment" including "for example backhoes * * * [and] pickup trucks."

We note further that the Arrastra Wilderness is not a homogenous area "where the earth and its community of life are untrammeled by man," 16 U.S.C. § 1133(c) (1994), but an area interlaced with the imprint of man. Where such an area is designated as a wilderness, the lawmakers have wisely recognized the need for the coexistence of man's works and activities in harmony with, and deference to, the wilderness elements. This is what BLM has attempted to achieve in its WIAEA. NWF's position ignores the balance of interests intended by the statutes and regulations which do not prohibit the limited use of motor vehicles, which requires passable access routes in wilderness areas. See Southern Utah Wilderness Alliance, 140 IBLA 341, 348-49 (1997). We cannot conclude that the access repair and maintenance activities foreseen in the WIAEA are contrary to the Wilderness Act or other applicable authorities.

NWF also charges that BLM has segmented its "analysis of connected actions" in violation of the National Environmental Policy Act of 1969 (NEPA) by not forseeing that its 1991 grazing authorization in the Santa Maria Allotment would "result in the bulldozing of a road into Peoples Canyon" 5 years later. (SOR at 40.) NWF refers to BLM's RIM plan (see IBLA 95-526 and 96-536), a decision authorizing the improvement of Sycamore Spring to serve as a cattle watering facility (under appeal in IBLA 96-535) and the WIAEA under appeal herein. This represents segmented decisionmaking, NWF contends, analogous to Thomas v. Peterson, 753 F.2d 754 (9th Cir. 1975), which will result in serious degradation of wildlife habitat and compromise of the Arrastra Mountain Wilderness. (SOR at 42-43.) Further, NWF contends that reasonable and obvious alternatives were not considered.

BLM asserts, citing the Council on Environmental Quality (CEQ) regulations at 40 C.F.R. § 1502.20, that "tiering" or a hierarchy of levels covering environmental matters, proceeding from the broader or general to the more particular or site specific, is permissible under prescribed circumstances. BLM asserts that its RIM plan, EA for the McGregor Springs improvement, and the WIAEA "are independent but related actions" which do not require analysis in a single NEPA document. (Answer at 50-53.) BLM asserts that all reasonable alternatives were considered.

[5] When BLM has taken a hard look at all of the likely environmental impacts of a proposed action, it will be deemed to have complied with NEPA, regardless of whether a different substantive decision would have been reached by this Board or a court (in the event of judicial review). See Strycker's Bay Neighborhood Council, Inc. v. Karlen, 444 U.S. 223, 227!28 (1980); Great Basin Mine Watch, 148 IBLA 1, 3 (1999). An environmental impact statement (EIS) is not required where a convincing case is made that no significant environmental impacts are anticipated. NEPA does not direct BLM to take any particular action, or refrain from taking an action which will result in environmental degradation. It merely mandates that whatever action BLM takes be initiated only upon a full consideration of all environmental impacts. Oregon Natural Resources Council, 116 IBLA 355, 361 n.6 (1990).

The CEQ regulations provide that Federal agencies shall, to the fullest extent possible, "[u]se the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human

environment." 40 C.F.R. § 1500.2(e). Agencies shall "[r]igorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated." 40 C.F.R. § 1502.14(a). A "rule of reason" approach applies to both the range of alternatives and the extent to which each alternative must be addressed. See Natural Resources Defense Council, Inc. v. Morton, 458 F.2d 827, 834 (D.C. Cir. 1972); Allen D. Miller, 132 IBLA 270, 274 (1995). Thus, the fact that a party may favor an alternative other than that adopted by BLM does not render the action taken by BLM erroneous. This Board must give considerable deference to the ultimate policy selections of the resource managers. See In re Bryant Eagle Timber Sale, 133 IBLA 25, 29 (1995); Oregon Natural Desert Association, 125 IBLA 52, 60 (1993).

Responding to NWF's charge of impermissible segmentation of the environmental analysis, we note that "tiering" is entirely permissible where a project is too large to complete at one time and must be divided into parts. J.C. Coker, III v. Skidmore, 744 F. Supp. 121, 123 (S.D. Miss, W.D. 1990). Thomas v. Peterson, supra, is not, as NWF asserts, analogous to this case. Peterson involved timber road construction in the Nez Perce National Forest in Idaho. The Forest Service had considered, in separate EA's and FONSI's, the impacts of road construction and the impacts of timber sales facilitated thereby, respectively. The court found, partially based on evidence showing timber sales in an advanced stage of planning, that road construction and subsequent timber sales were actions having cumulatively significant impacts which required comprehensive consideration as a whole in an EIS. Id. at 761.

In this case, access to the Barnes' inholding is a matter independent of BLM's authorization of grazing on the Santa Maria Allotment. As BLM observes (Answer at 54), the operative factor is the Barnes' ownership of real estate; in the absence of grazing BLM would still have been required to consider the Barnes' request for motorized access to their inholding.

Moreover, BLM did evaluate and consider alternatives. The alternatives, other than the proposed action, are discussed beginning on page 8 of the WIAEA. Alternative B, unlimited access, would have allowed the mechanized maintenance of the entire access route and resulted in a vastly increased number of motorized trips per year. Other alternatives including the use of pack stock only or the use of helicopters and pack stock were considered and rejected as unreasonable and too costly. (WIAEA at 10.) 2/

2/ NWF suggests as "the most reasonable and logical alternative" the allowance of motorized access along the route from the wilderness boundary to the rim of Peoples Canyon and switching at that point to horses, to reach the inholding. (SOR at 46.) NWF charges that BLM's refusal to consider this alternative is arbitrary and capricious. (SOR at 47.) First, BLM did consider, but rejected, this alternative. Secondly, as BLM points out, the implementation of such an alternative would leave unaddressed the Barnes' request for motorized access.

NWF further argues that BLM's WIAEA will threaten water quality in Peoples Canyon. (SOR at 48-52.)

BLM responds that it is aware of its responsibilities under the Clean Water Act, 33 U.S.C. § 1323 (1994), and of a Memorandum of Understanding with the Arizona Department of Environmental Quality, not to degrade water quality. The WIAEA states:

> Water quality at the southern end of Peoples Canyon riparian zone could be slightly impacted by short-term increased silt deposition [due to bulldozer repairs]. This impact is considered minor for overall water quality as most water sources, springs and pools are upstream from the potential silt deposition area. Areas downstream from this point have few riparian values as the creek and riparian-based vegetation disappear. With water management techniques applied to the route repair work (water bars, compaction, drains, etc.), erosion over the long term could actually decrease. There is a remote possibility of oil and fuel spills from the motorized/mechanized vehicles and equipment traversing the access route, but impacts would be insignificant to public land waters.

(WIAEA at 15-16.)

BLM states that annual water quality monitoring studies will be conducted at Sycamore Spring and South Peoples Spring. (Answer at 60.) We find no error in BLM's attention to water quality.

Finally, NWF charges that "if an engineering analysis were performed, it would reveal much more extensive construction work, and much greater environmental impacts, than described in the BLM's environmental assessment." (SOR at 55-58.) In this charge, NWF suggests that an engineering analysis was required and that BLM not only failed to perform such an analysis but covered up or failed to analyze the impacts which it would have disclosed.

A review of the facts reveals that this NWF charge is groundless. For example, half of the access route lies within Peoples Canyon on private land, where road maintenance or repair activity is not the responsibility of BLM. (Answer at 63.) Not only is NWF's repeated reference to extensive road construction a wholly unsupportable characterization of what the WIAEA actually permits, but, as we have noted earlier, the WIAEA also specifically addresses by way of mitigating actions and stipulations, the road repair activity which it does authorize on specific segments of the route. (WIAEA at 7-8.)

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

James P. Terry
Administrative Judge

I concur:

John H. Kelly
Administrative Judge